



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2004

Ms. Shannon G. Marty
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2004-4211

Dear Ms. Marty:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 201981.

The Texas Workers' Compensation Commission (the "commission") received a request for (1) "documentation of all edits the commission performs on medical bill data submitted by carriers," including "user documentation and a printout of the computer code implementing the edits," and (2) "a copy of any records used to create the system that processes medical bill data, including, but not limited to, any diagrams, flow-charts and technical specifications documents." You claim that some of the requested information is not public information as defined by the Act. You claim that the remainder of the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.¹ We have also considered comments submitted by the requestor as well as another third-party. See Gov't Code § 552.304 (providing for submission of public comments).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You contend that the information you have submitted as Attachments B and C, consisting of computer code from programs designed to process information in the Medical Review Division, do not constitute public information as defined by section 552.002 of the Government Code. The Act applies only to "public information." See Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. In Open Records Decision No. 581, this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a *tool for the maintenance, manipulation, or protection of public property* is not the kind of information made public under section 552.021 of the Government Code. Open Records Decision No. 581 at 4 (1990). Information such as the computer code for the programs at issue here is the type of information that has no significance other than its use as tools for the maintenance, manipulation, or protection of public property. Consequently, we conclude that the information in Attachments B and C is not public information as defined by section 552.002, and, therefore, is not subject to the Act.

You claim that the remaining submitted information is excepted by section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; Open Records Decision No. 615 at 4-5. Having considered your arguments and the material in Attachment D, we conclude that the information does not constitute discussion or internal communications that reflect

the policymaking function of the commission. Accordingly, the information in Attachment D may not be withheld under section 552.111 of the Government Code.

In summary, the information in Attachments B and C does not constitute public information under the Act and need not be released. You must release the remaining requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer E. Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 201981

Enc: Submitted documents

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